

ADA (AMERICANS WITH DISABILITIES ACT)

[Effective Date: October 1, 1998 (Revised: October 1, 2001; Revised: October 1, 2003; Revised September 1, 2017)]

§ 5305-1. Purpose.

The purpose of this Instruction is to provide for the implementation of an ADA procedure authorized by the County Manager.

§ 5305-2. Concept.

The Americans with Disabilities Act (ADA) is a federal law enacted in 1990 prohibiting discrimination against disabled individuals in the areas of employment, public services, public accommodations and telecommunications. The Act prohibits employers from discriminating against individuals with disabilities in any aspect of employment and requires employers to provide reasonable accommodations to enable workers with disabilities to perform the essential functions of their jobs, unless doing so would impose an undue hardship on the organization.

A. Definitions: As used in this CMA, the following terms shall have the meanings indicated:

ESSENTIAL JOB FUNCTIONS— The basic job duties that an employee must be able to perform with or without reasonable accommodation.

INDIVIDUAL WITH A DISABILITY— A person who has a physical or mental impairment that substantially limits a major life activity or who has a record of a substantially limiting impairment, or a person who is regarded as having a substantially limiting impairment.

QUALIFIED INDIVIDUAL WITH A DISABILITY— A person with a disability who satisfies the skills, experience, educational and other job-related requirements of a position held or desired and who, with or without reasonable accommodation, can perform the essential functions of the job.

REASONABLE ACCOMMODATION— Any change or adjustment to a job or work environment that permits a qualified applicant or employee with a disability to participate in the job application process, to perform the essential functions of the job or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities.

UNDUE HARDSHIP— Reasonable accommodation is not necessary if doing so would cause undue hardship on the organization. Undue hardship means that an accommodation would be unduly costly, extensive, substantial, disruptive or would fundamentally alter the nature or operation of the organization.

B. Key Provisions:

- (1) To be protected under ADA, an applicant or employee must satisfy the education, experience, license and other job-related qualification standards of the job to be considered qualified.

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- (2) Qualification standards and/or selection criteria must be job-related and consistent with business necessity.
- (3) The County shall provide reasonable accommodation only to the known physical or mental limitations of a qualified applicant or employee unless it can show that the accommodation would impose an undue hardship on the organization. It is the responsibility of the applicant or employee with a disability to inform the employer that an accommodation is needed to participate in the application process, to perform essential job functions or to receive equal benefits and privileges of employment. The County is not required to provide reasonable accommodation if unaware of the need or if the individual is not qualified for the position.
- (4) If an applicant or employee requests an accommodation and the need is not obvious or if the County does not believe the accommodation is needed, the County may request documentation of the individual's functional limitations to support the request.
- (5) The County will engage in an interactive process with any employee or applicant who requests a reasonable accommodation. This is simply a formal way of saying that the County and employee will discuss the request for reasonable accommodation (including possible types of accommodations) in a way that allows the County to make an informed decision about the employee's or applicant's request.
- (6) The ADA is applicable to all aspects of employment, including performance evaluations and termination.
- (7) The County shall provide equal access to lunch rooms, break areas, training and other employer-sponsored services such as transportation, health programs and social events that are available to a non-disabled individual. The County shall comply with this unless this would cause an undue hardship.

C. ADA in the Hiring Process:

- (1) The essential functions of a position must be identified before taking an employment action such as posting/advertising a job, recruiting and hiring. A position profile shall be completed and submitted to Human Resources for each position posted to comply with this requirement.
- (2) Interviews shall be conducted in an accessible location for people with mobility impairments. Additional accommodations shall be made on a case-by-case basis. Divisions should advise applicants in advance when a test will be given so that an individual who needs an accommodation can make such a request. If a request is made, the division shall notify Human Resources.
- (3) There are specific pre-employment and interview questions that cannot be asked to comply with ADA. Divisions should contact Human Resources for assistance.
- (4) Questions about the person's ability to perform specific job functions may be asked.

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- (5) If an applicant has a known disability that would appear to interfere with or prevent performance of a job-related function, the applicant may be asked to demonstrate how this function would be performed, even if other applicants do not have to do so.
- (6) The County cannot refuse to hire someone because they cannot perform marginal job functions but they may be asked about their ability to perform all job functions, essential and marginal.
- (7) Supervisors shall consult with Human Resources Division who will assist in determining whether the individual is qualified to perform essential job functions, if the person is qualified, and determine whether an accommodation is available that would not cause undue hardship. If the individual with a disability does not meet the education, experience and other requirements of the position or an accommodation would cause an undue hardship, that individual is not qualified. However, if that individual meets the stated requirements and a reasonable accommodation can be made, that individual is qualified.

D. Administration/Enforcement:

- (1) The Human Resources Division will assist divisions in determining essential job functions.
- (2) The Equal Employment Opportunity Commission (EEOC) enforces the employment provisions of the ADA.
- (3) The County encourages that all ADA-related disputes be resolved through informal negotiation and will make every effort to resolve complaints internally. The Commitment to Fair Treatment Policy shall be utilized to investigate and resolve EEO-related complaints. There shall be no retaliation against any applicant or employee who files a charge, participates in an EEO investigation or opposes an unlawful employment practice.

E. ADA in Other Areas: Disabled individuals are also protected under ADA in the areas of public facilities, communications and public services. The County will attempt to resolve these complaints internally. Complaints about facilities and communications shall be referred to the Facilities Management Director. Complaints concerning public services and programs shall be referred to the Public Services Administrator.

§ 5305-3. Currency.

The Human Resources Division is responsible for maintaining the currency of this Instruction.

§ 5305-4. Reference.

Collier County Personnel Ordinance, Ordinance No. 2001-50: It is the policy of the County to comply with the provisions of the Americans with Disabilities Act (ADA) of 1990.